

AGREEMENT BETWEEN OWNER AND DESIGN-BUILD CONTRACTOR

THIS AGREEMENT BETWEEN OWNER AND DESIGN-BUILD CONTRACTOR (the "Agreement") IS

made as of the 27th day of January in the year 2012,

BETWEEN the Owner:

NF Marina LP
6222 Wilshire Blvd., Suite 400
Los Angeles, CA 90048

AND the Design-Build Contractor ("Contractor"):

Bellingham Marine Industries
1205 Business Park Drive
Dixon, CA 95620

WITH RESPECT TO THE Project:

Design-Build Renovation of Bay Club Marina

The Owner and the Contractor agree as follows:



ARTICLE 2 THE WORK

The Contractor shall perform all the Work (defined below) required by the Contract Documents, and the Work shall be performed in compliance therewith in all material respects. The Work is generally described as follows:

Design-Build Renovation of Bay Club Marina

The Work consists of two phases, described below. If Owner so elects by written notice to Contractor given by April 1, 2012 (a "Phase I Only Notice"), the Work will consist only of Phase 1, and the Contract Sum will be \$136,019. If Owner does not give the Phase I Only Notice, then the Work will consist of both Phases 1 and 2, and the total Contract Sum (including both the Phase I and Phase II Work) will be \$7,050,000.

Prior to proceeding with construction, the Owner and Contractor shall meet regarding permit drawings and submittals, and they will endeavor to mutually approve a set by March 15, 2012. The Owner will review and give Contractor its comments (or approval) within ten (10) days after the Contractor's delivery of the initial set for Owner's review, and the Owner will review and give Contractor its comments (or approval) within four (4) business days after the Contractor's delivery of each subsequent set for Owner's review. If no stop work notice is received by the Contractor prior to April 1, 2012, the permit drawings and submittals shall be deemed approved by the Owner, and the Contractor shall be authorized to proceed with construction.

The Phases shall comprise:

Phase 1 Engineering/Design and permit package as described in Contractor's Proposal dated December 28, 2011, Items 1.1, 1.2 and 1.23, and all applicable provisions thereof, necessary for the construction of the Bay Club Marina by Contractor. Restrictions for use of the Engineering and Design services are set forth in 3.9 of General Conditions.

Phase 2 Construction of the Project in accordance with Contractor's Proposal dated ~~December 28, 2011~~ ^{JANUARY 27, 2012}

The Phase 2 construction will be undertaken no more than two docks at a time. Construction will be undertaken per the phasing plan attached as Exhibit G. Owner and Contractor agree that Phase 2 construction work will be performed on a staggered basis, two docks at a time. As each dock is completed, the Owner and Contractor shall document substantial completion of that portion of the work and that portion of the work shall be turned over to the Owner so that dock tenants can re-occupy their slips. As each dock achieves substantial completion, a punchlist shall be established for the dock and, upon completion of the punchlist work final payment shall be made and retainage released for that portion of the work completed.

ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Phase 1 will be completed by April 1, 2012 based upon a Notice to Proceed of January 30, 2012. If Owner does not give the Phase 1 Only Notice, Substantial Completion of the entire work (including Phases 1 and 2) shall be achieved not later than May 24, 2013. Physical construction at the Site will begin no later than the first week of September 2012, subject to adjustments in the construction schedule as provided in the Contract Documents.

In order to achieve the Substantial Completion deadline, Contractor will be required to place orders for materials in advance of securing permits of governmental authorities having jurisdiction over the Project. The Contract Sum and

IN WITNESS WHEREOF, this First Amendment is executed as of the date first set forth above.

"OWNER"

NF MARINA, LP,
a California limited partnership

By: 

David J. Nagel,
its Authorized Agent

"CONTRACTOR"

BELLINGHAM MARINE INDUSTRIES

By: 

Name: JAMES R. PUDEZ

Title: G.M.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR WHERE THE
BASIS OF PAYMENT IS THE COST OF THE WORK PLUS A FEE WITH
A GUARANTEED MAXIMUM PRICE**

AGREEMENT IS MADE BY AND BETWEEN:

The Owner: **NF MARINA, LP**
6222 Wilshire Boulevard, Suite 400
Los Angeles, California 90048
Attn: David J. Nagel

and the Contractor: **MIKE ROVNER CONSTRUCTION**
1916 Duncan Street
Simi Valley, California 93065
Attn:

The Project is: **THE BAY CLUB**
(SITE, PROMENADE AND MARINA UTILITIES WORK)
13955 to 14055 West Tahiti Way
Marina del Rey, California 90292

The Architect is: **VAN TILBURG, BANVARD & SODERBERGH, AIA**
1738 Berkeley Street
Santa Monica, CA 90404
Attn: Gustaf Soderbergh

The Inspection Consultant is: **DECRON PROPERTIES CORP.**
6222 Wilshire Boulevard, Suite 400
Los Angeles, CA 90048
Attn: Randy Sovereign

The Project Manager is: **DECRON PROPERTIES CORP.**
6222 Wilshire Boulevard, Suite 400
Los Angeles, California 90048
Attn: Randy Sovereign

The date of this Agreement shall be the latest date of execution by the Contractor and the Owner,
as indicated on the signature page hereto.

The Owner and Contractor agree as set forth below.

Contractor's Initials

DH

Owner's Initials



4.7.2 Liquidated damages may accrue under both Paragraph 4.7(a) and Paragraph 4.7(b) for the same calendar day. In that case, the liquidated damages with respect to such calendar day will be $\$1,000 + \$500 = \$1,500$.

4.7.3 The Contractor acknowledges that in the event that it fails to achieve completion of the Critical Phase by the Critical Phase Deadline Date or of the entire Work by the Scheduled Completion Date, as the case may be, the Owner will incur substantial damages and the extent of such damages shall be incapable or very difficult of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth above represents a good faith estimate on the part of the Contractor and the Owner as to the actual potential damages that the Owner will incur as a result of late completion of the Work in question. The foregoing liquidated damages provision is intended by the parties to be a good faith estimate of the damages and losses the Owner will suffer due to a delay in the Completion of the designated Work and such damages shall be the sole and exclusive remedy of the Owner for late completion of such Work. The amount of liquidated damages calculated hereunder does not include any penalty.

4.8 Incentive Fee. The Owner agrees to pay the Contractor an incentive fee of One Hundred Dollars (\$100) per each calendar day that the Critical Phase is completed prior to the Critical Phase Completion Date, subject to a maximum of Three Thousand Dollars (\$3,000). In addition, the Owner agrees to pay the Contractor an incentive fee of Fifty Dollars (\$50) per each calendar day that the entire Work is completed prior to the Scheduled Completion Date, subject to a maximum of Fifteen Hundred Dollars (\$1,500). Any incentive fee earned by the Contractor shall be paid within Fifteen (15) days after the later to occur of: a) the date upon which all final retention is to be released to the Contractor under the provisions of Paragraph 13.5 of this Agreement; and b) the expiration of the statutory period for filing mechanic's liens with any liens filed against the Project and arising by, through or under the Contractor or any Subcontractor released of record or bonded off in a manner reasonably satisfactory to the Owner. Any incentive fee otherwise owing to the Contractor shall be reduced by any amounts required by the Owner to complete warranty or Punch-List work which the contractor failed to complete after receiving notice from the Owner and for any Liquidated Damages due from, but unpaid by, the Contractor.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION SERVICES; CONTRACT SUM; GUARANTEED MAXIMUM PRICE

5.1 Fee for Services. The Owner shall pay the Contractor a total fee for the Work (the "Contractor's Fee") equal to Fifty-Eight Thousand Sixty Dollars (\$58,060).

5.2 Contract Sum; Guaranteed Maximum Price. In full consideration for the full and complete performance of the Work and all other obligations of the Contractor hereunder, the Owner agrees to pay to the Contractor a sum of money equal to the total of: a) the actual Cost of the Work (as defined in Paragraph 7.1); b) the General Requirements amount (as defined in Paragraph 5.6); c) the Contractor's Fee (as defined in Paragraph 5.1); and d) the Contractor markup as set forth under Exhibit C hereto, subject to adjustment only as expressly provided in Article 6 of this Agreement (collectively the "Contract Sum"), which Contract Sum shall not exceed One Million Two Hundred Eighty-Two Thousand Seven Hundred Ninety-Two Dollars (\$1,282,792) (hereinafter referred to as the "Guaranteed Maximum Price"). The

Contractor's Initials DH

Owner's Initials [Signature]

IN WITNESS WHEREOF, the parties hereto have executed these General Conditions on the date upon which the parties executed the Agreement in order to confirm the incorporation of these General Conditions into the Contract.

CONTRACTOR

MIKE ROVNER CONSTRUCTION,
a California corporation

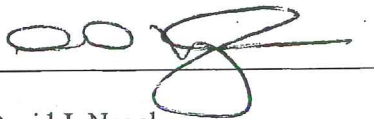
By: 

Name: Dave Holland

Title: Senior Vice President

OWNER

NF MARINA, LP,
a California limited partnership

By: 

Name: David J. Nagel

Title: Authorized Agent

Contractor's Initials 

Owner's Initials 